

Afsar Hussaln Vs. State

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Court : Delhi

Decided On : Mar-19-1991

Reported in : 44(1991)DLT282

Judge : V.B. Bansal, J.

Acts : Passport Act, 1920 - Sections 12; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 18

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 234 of 1991

Appellant : Afsar Hussain

Respondent : State

Advocate for Def. : Shri. S. Lal

Advocate for Pet/Ap. : P.L. Kalra and; S. Lal, Advs

Judgement :

V.B. Bansal, J.

(1) By way of this application Afsar Husain petitioner has prayed for being released on bail in case R.C. No. 6 of 1989 Siu Xvi dated 23rd November, 1989 recorded by the C.B.I. and also to consider the contempt application moved by him.

(2) Learned counsel for the petitioner has submitted that there has been a highhandedness on the part of Investigating Officer who has, in fact, falsely implicated the petitioner in this case and there was a demand of illegal gratification which could not be fulfilled by him and on this account the Investigating Officer managed to avoid compliance of the orders passed by Additional Sessions Judge and violating the clear directions had even taken the petitioner to Bombay there by committed contempt of Court. He has also submitted that there was, in fact, even a threat to the counsel for the petitioner not to appear for the petitioner in the proceedings.

(3) Before considering these submissions it would, in my view be appropriate to give some facts of the case. On 23rd November, 1989 the aforesaid Fir was recorded by the Cbi on the basis of source information against four known persons including the petitioner and other unknown persons. It was in respect of an incident which took place during the night between 22nd and 23rd of January 1989 onwards and the place of occurrence had been stated to be at Bombay and Jeddah (Saudi Arabia). It was, inter alia, mentioned in this Fir that information was received through a reliable source that aforesaid persons in conspiracy with others were indulging in exportation of narcotics to Saudi Arabia and were traveling on the basis of fictitious passports and travel documents showing themselves as Haj Pilgrims and that they travelled as such from Bombay to Jeddah (Saudi Arabia) by Haj ship leaving Bombay harbour during the night between 22nd and 23rd June, 1989. I here was specific information that their luggage contained narcotic drugs and psychotropic substances.

(4) This information was conveyed to Saudi Arabia Police on the basis of which the baggages were checked which led to the recovery of 34.140 kgs. of Hashish and 13.895 kgs. of Opium. It was also reported that the Haj Pilgrims in conspiracy with others were illegally exporting narcotic drugs and psychotropic substances to Saudi Arabia and on their return they were importing electric goods and gold illegally to India. In this way offences punishable under Ss. 120B read with Ss. 18, 20, 23 and 29 of Ndps Act and substantive offences punishable under Ss. 18, 20, 23 and 29 of the Ndps Act and Ss. 420, 468 and 471 Indian Penal Code besides the offence under Sec. 12 of the Passport Act are stated to have been committed.

(5) The investigation of this case was entrusted to Inspector N.S. Virk. During the course of investigation the 1.0. made efforts to apprehend the petitioner who was not available and so after moving an application before Additional Chief Metropolitan Magistrate, IIIrd Court, Esplanade Road, Bombay, warrants of arrest were got issued in District Moradabad (UP). The 1.0. took steps according to law and got the non-bailable warrants of the petitioner endorsed- from the Superintendent of Police, Moradabad. the petitioner was served with a notice under S. 160 Cr.P.C. on the basis of which he appeared before the 1.0. at Delhi and thereafter he was arrested on 30.11.1990. The petitioner when produced before a Metropolitan Magistrate, New Delhi was remanded to police custody till 12th December, 1990 with a direction to be produced before the concerned court on 12th December, 1990.

(6) An application dated 6th December, 1990 was moved by the petitioner for bail which came up before Shri Padam Singh Addl. Sessions Judge, New Delhi on 7th December, 1990. It was adjourned by the Addl. Sessions Judge to 8th December, 1990 since service report was not received. On this adjourned date i.e. 8th December, 1990 after hearing counsel for both the parties an order was passed by the Addl. Sessions Judge that the accused be produced before the court of session on 10th December, 1990 and was not to be produced at Bombay Court on 12th December, 1990 the date when he was to be produced there till the application was disposed of. This application came up for hearing before Shri J.D. Kapur Addl. Sessions Judge, New Delhi on 10th December, 1990 the day on which the applications for bail in New Delhi courts were being dealt with by Shri Kapur. It was observed by the Addl. Sessions Judge that according to the allegations against the petitioner he was traveling in fictitious name and with a fictitious passport in the ship from which Hashish and Opium were recovered and that the investigation revealed that the petitioner was indulging in smuggling of international level who had already disclosed certain sources of Bombay where he was going to be produced on 12th December 1990. The petitioner was, thus, allowed to be produced before the concerned court at Bombay on 12.12.1990 as it was not thought proper to interfere with the order of police remand already granted and it was to be decided by the concerned magistrate as to what type of remand was further to be given. The application was, however, adjourned to 17th

December, 1990.

(7) In the meantime, an application was moved by the counsel for the petitioner before a metropolitan magistrate that there was a direction by the Addl. Sessions Judge to the Cbi to produce the accused before committal court on 12.12.1990 and that no further remand may be given to the CBI. A further prayer was made that the I.O. be asked to produce the accused on 13.12.1990 as he was not produced on that day i.e. 12.12.90. Notice of this application was given to the Cbi and this application was dismissed by a metropolitan magistrate on 13.12.1990 by saying that no application for remand was made by the Cbi and that as per the Senior P.P. of the respondent the accused had already been produced before the concerned court at Bombay on 12th December, 1990.

(8) An application was moved by the petitioner for taking proceedings against the I.O. for contempt of court for having taken the accused to Bombay in spite of the orders dated 8.12.1990 of Shri Padam Singh Addl. Sessions Judge not to take the petitioner to Bombay till the disposal of the application.

(9) Learned counsel for the petitioner moved another application before the Sessions Court for taking proceedings under the Contempt of Courts Act against the I.O. for having given threats to counsel appearing for the petitioner.

(10) The matter came up before Shri P.L.Jain Addl. Sessions Judge, New Delhi who vide order dated 8.1.1991 dismissed the application.

(11) I have heard Shri P.K.Kalra learned counsel for the petitioner and Shri S. Lal learned counsel for the respondent.

(12) Learned counsel for the petitioner has submitted that the admitted case of the respondent has been that the case was registered at Delhi and, thus, the courts at Delhi had the jurisdiction to entertain the application for bail of the petitioner. He has also submitted that the I.O. has intentionally removed the petitioner to Bombay in violation of the orders of the Sessions Court knowing it fully well that the petitioner was innocent having no relation at Bombay and so would not be able to pursue the matter at Bombay. He has further submitted that there is denial of

entertaining an application for bail by the Addl. Sessions Judge against the provisions of law on account of which the petitioner has been deprived of his valuable rights of seeking order of bail from the Sessions Court at Delhi. He has also submitted that the petitioner, in fact, is not involved in the offence at all and there is no incriminating evidence against him. A prayer has, therefore, been made for his release.

(13) These submissions have strongly been controverted by learned counsel for the respondent who has submitted that no offence was committed in this case at Delhi. According to him the offence was committed at Bombay and Jeddah and that the case was registered at Delhi being the Headquarter of the CBI. According to him merely because the case has been registered at Delhi would not give jurisdiction to this court and that the concerned court of the Addl. Chief Metropolitan Magistrate, Bombay is already seized of the matter where the petitioner was produced in compliance of the non-bailable warrants issued. He has, thus, submitted that the remedy of seeking bail is available to the petitioner in the concerned court at Bombay and that the learned Addl. Sessions Judge has not committed any illegality or even irregularity in disposing of the application.

(14) I have given my thoughtful considerations to all these submissions and examined, the records.

(15) Learned counsel for the petitioner has placed reliance upon Sec. 188 of the Code of Criminal Procedure which provides that when an offence is committed outside India by a citizen of India he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. According to him, the petitioner was found in U.P. or in any case at Delhi and, thus, could be tried only at these places and not at Bombay. At this stage, in my view, I am not to finally decide about the point of jurisdiction. However, apparently accordingly to the Fir the offence was committed at Bombay and Jeddah and, thus, provisions of Sec. 188 would be attracted. However, it is too early to give any positive finding on this point but prima facie I am clearly of the view that there was nothing wrong in the I.O. having obtained the warrant of arrest against the petitioner from the court of Acmm Bombay.

(16) It was incumbent upon the I.O. to produce the petitioner in the concerned court wherefrom the warrants of arrest were issued.

(17) Grievance of learned counsel for the petitioner had been that there has been a violation by the Investigating Officer of the order dated 8th December, 1990 passed by Shri Padam Singh, Addl. Sessions Judge giving a direction not to take the petitioner to Bombay till the disposal of the application. Admittedly, the said application was disposed of only on 8th January, 1991 while the petitioner was produced in the court at Bombay on 12th December, 1990. In this way, submission of the learned counsel for the petition that there is a flagrant violation of the court's order by the Investigating Officer. I am afraid this submission is not borne out from the records. As already referred to this application came up for hearing before Shri J.D. Kapur on 10th December, 1990 who was dealing with the bail applications on that in the courts at Patiala House, New Delhi. He had specifically permitted the I.O. to produce the petitioner in the court at Bombay where he was required to be produced and the investigation was still going on. Thus, cannot be said that there was any violation of the court's order by the I.O. when he produced the petitioner before the court at Bombay.

(18) Learned counsel for the petitioner has also submitted that there is a threat given to counsel for the petitioner by the I.O. that in case they followed the application for bail they would be involved in some false case.

(19) Learned counsel for the respondent has submitted that no such threat was ever given by the I.O. The prayer of learned counsel for the petitioner for initiating contempt of court proceedings has not been acceded to by learned Addl. Sessions Judge, New Delhi on the plea that the petitioner was free to take appropriate proceedings before proper court.

(20) Learned counsel for the petitioner has submitted that since the application was initially dealt with by Shri Param Singh there was no justification for transferring the application to other court and this dealing of the application by different Addl. Sessions Judge is in violation of the established law of making it obligatory that the application for bail should be dealt with by the same Judge. I do not agree with this submission. The applications for bail are assigned to different

officers and it is not the allegation that only this specific application was dealt with by different Addl. Sessions Judge while other applications were dealt with by Shri Padam Singh. Thus, in routine on a particular date Shri Padam Singh was not available and so the application was being dealt with by another Addl. Sessions Judge. It cannot be said that there was any intentional transfer of the application from one court to another.

(21) As already referred to the offence is alleged to have been committed at Bombay and Jeddah and the court of Acmm, 3rd Esplanade Road, Bombay is seized of the matter and the investigation was going on. The accused has already been produced in the said court and is stated to be in judicial custody at Bombay. In these circumstances, I have no hesitation in coming to the conclusion that the petitioner has to move the concerned court at Bombay for bail. This relief of bail cannot be granted to the petitioner by this Court, As regards initiating the Contempt of Courts Proceedings against the Investigating Officer, the petitioner can take appropriate steps independently of the action being taken by the Additional Sessions Judge.

(22) In view of my aforesaid discussion, the application stands dismissed.

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